

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARCY R. CARVER)	
Claimant)	
VS.)	
)	
YOXALL, ANTRIM & YOXALL)	Docket No. 169,530
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On April 22, 1997, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Bruce E. Moore on November 21, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Henry A. Goertz of Dodge City, Kansas. Respondent and its insurance carrier appeared by and through their attorney, B. G. Skip Larson of Dodge City, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Richard L. Friedeman of Great Bend, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant met with either accidental injury or occupational disease on or about August 25, 1992.
- (2) Whether claimant's accidental injury arose out of and in the course of her employment with respondent.
- (3) Whether claimant provided timely notice of the accident to respondent.
- (4) The nature and extent of claimant's injury and/or disability.
- (5) Claimant's entitlement to past and future medical treatment.
- (6) The liability, if any, of the Kansas Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and the conclusions of law:

The Appeals Board finds that the award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

In workers compensation litigation the burden of proof is on claimant to prove claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1992 Supp. 44-501 and K.S.A. 1992 Supp. 44-508(g).

A review of the substantial evidence in this file convinces the Appeals Board that claimant has failed to prove her ongoing symptomatology relates to the conditions of her employment. The existence of multiple preexisting problems along with specific admissions made by claimant both in writing and to the various examining and treating

physicians about her preexisting problems convinces the Appeals Board that claimant's ongoing symptomatology relates to numerous nonwork related circumstances.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated November 21, 1996, should be, and is hereby, affirmed in all respects and an award of compensation is hereby denied the claimant Marcy R. Carver and against the respondent Yoxall, Antrim & Yoxall and its insurance carrier St. Paul Fire & Marine Insurance Company and the Kansas Workers Compensation Fund for the injuries alleged.

The fees necessary to defray the expense of the Administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

UNDERWOOD AND SHANE

Preliminary Hearing Transcript Dated November 5, 1992	\$ 350.80
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OWENS, BRAKE, COWAN & ASSOCIATES

Regular Hearing Transcript Dated July 17, 1995	\$1,214.70
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Motion Hearing Transcript Dated August 1, 1996	\$ 160.35
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Total	\$1,375.05
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BARBER & ASSOCIATES

Deposition of Dr. Charles Hinshaw Dated September 11, 1995	\$ 662.80
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SUSAN MAIER, C.S.R.

Deposition of Marcy Carver Dated January 12, 1996	\$ 184.31
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Deposition of Jack McConnell Dated January 12, 1996	\$ 171.32
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Total	\$ 355.63
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HOSELTNER & ASSOCIATES, INC.

Deposition of Dr. Harold W. Barkman Dated February 9, 1996	\$ 311.20
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COURT REPORTING SERVICE

Deposition of Mitchel Woltersdorf, Ph.D. Dated May 6, 1996	\$ 310.00
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IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
B.G. Skip Larson, Dodge City, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director